

after notification and opportunity for public comment, the list of fisheries published in accordance with §229.21(b) whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) *Southern sea otters*. This subpart does not apply to the taking of Southern (California) sea otters.

Subpart C—Take Reduction Plan Regulations and Emergency Regulations

§ 229.31 Pacific Offshore Cetacean Take Reduction Plan.

(a) *Purpose and scope*. The purpose of this section is to implement the Pacific Offshore Cetacean Take Reduction Plan. Paragraphs (b) through (d) of this section apply to all U.S. drift gillnet fishing vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. For purposes of this section, the fishing season is defined as beginning May 1 and ending on January 31 of the following year.

(b) *Extenders*. An *extender* is a line that attaches a buoy (float) to a drift gillnet's floatline. The floatline is attached to the top of the drift gillnet. All extenders (buoy lines) must be at least 6 fathoms (36 ft; 10.9 m) in length during all sets. Accordingly, all floatlines must be fished at a minimum of 36 feet (10.9 m) below the surface of the water.

(c) *Pingers*. (1) For the purposes of this paragraph (c), a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (\pm 2 kHz) sound at 132 dB (\pm 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (\pm 15 milliseconds), and repeating every 4 seconds (\pm .2 seconds); and remains operational to a water depth of at least 100 fathoms (600 ft or 182.88 m).

(2) While at sea, drift gillnet vessels with gillnets onboard must carry enough pingers to meet the configuration requirements set forth under paragraph (c)(3) of this section.

(3) Pingers must be attached on or near the floatline and on or near the leadline and spaced no more than 300 ft (90.9 m) apart. Pingers attached on ex-

tenders, or attached to the floatline with lanyards, must be within 3 ft (0.91 m) of the floatline. Pingers attached with lanyards to the leadline must be within 6 ft (1.82 m) of the leadline. Pingers on or near the floatline and on or near the leadline must be staggered, such that the horizontal distance between a pinger on or near the floatline and a pinger on the leadline is no more than 150 ft (45.5 m). Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

(4) The pingers must be operational and functioning at all times during deployment.

(5) If requested, NMFS may authorize the use of pingers with specifications or pinger configurations differing from those set forth in paragraphs (c)(1) and (c)(3) of this section for limited, experimental purposes within a single fishing season.

(d) *Skipper education workshops*. After notification from NMFS, vessel operators must attend a skipper education workshop before commencing fishing each fishing season. For the 1997/1998 fishing season, all vessel operators must have attended one skipper education workshop by October 30, 1997. NMFS may waive the requirement to attend these workshops by notice to all vessel operators.

[62 FR 51813, Oct. 3, 1997, as amended at 63 FR 27861, May 21, 1998]

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Regulated waters*. The regulations in this section apply to all U.S. waters except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters*. The regulations in this section do not apply to waters landward of the following lines:

Maine and New Hampshire

44° 49.52' N 66° 56.10' W TO 44° 48.90' N 66° 57.00' W
 44° 38.60' N 67° 11.50' W TO 44° 36.26' N 67° 15.70' W
 44° 36.26' N 67° 15.70' W TO 44° 27.80' N 67° 32.85' W
 44° 27.80' N 67° 32.85' W TO 44° 26.48' N 67° 36.00' W
 44° 26.48' N 67° 36.00' W TO 44° 21.75' N 67° 51.85' W

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44° 21.75' N 67° 51.85' W TO 44° 19.60' N 68° 03.00' W
 44° 19.45' N 68° 02.00' W TO 44° 14.40' N 68° 11.55' W
 44° 14.15' N 68° 11.90' W TO 44° 13.25' N 68° 20.20' W
 44° 13.25' N 68° 20.20' W TO 44° 13.71' N 68° 28.31' W
 44° 13.21' N 68° 28.92' W TO 44° 10.48' N 68° 35.80' W
 44° 10.48' N 68° 35.80' W TO 44° 08.80' N 68° 40.80' W
 44° 08.80' N 68° 40.80' W TO 44° 02.25' N 68° 48.25' W
 44° 02.10' N 68° 48.40' W TO 43° 51.75' N 69° 17.10' W
 43° 51.75' N 69° 17.10' W TO 43° 48.15' N 69° 35.90' W
 43° 48.15' N 69° 35.90' W TO 43° 42.00' N 69° 51.10' W
 43° 42.00' N 69° 50.10' W TO 43° 33.47' N 70° 12.35' W
 43° 33.47' N 70° 12.35' W TO 43° 21.90' N 70° 24.90' W

Rhode Island

41° 22.41' N 71° 30.80' W TO 41° 22.41' N 71° 30.85' W (Pt. Judith Pond Inlet)
 41° 21.31' N 71° 38.30' W TO 41° 21.30' N 71° 38.33' W (Ninigret Pond Inlet)
 41° 19.90' N 71° 43.08' W TO 41° 19.90' N 71° 43.10' W (Quonochontaug Pond Inlet)

New York

West of the line from the Northern fork of the eastern end of Long Island, NY (Orient Pt.) to Plum Island to Fisher's Island to Watch Hill, RI. (Long Island Sound)

41° 11.40' N 72° 09.70' W TO 41° 04.50' N 71° 51.60' W (Gardiners Bay)
 40° 50.30' N 72° 28.50' W TO 40° 50.36' N 72° 28.67' W (Shinnecock Bay Inlet)
 40° 45.70' N 72° 45.15' W TO 40° 45.72' N 72° 45.30' W (Moriches Bay Inlet)
 40° 37.73' N 73° 18.40' W TO 40° 38.00' N 73° 18.56' W (Fire Island Inlet)
 40° 34.40' N 73° 34.55' W TO 40° 35.08' N 73° 35.22' W (Jones Inlet)

New Jersey

39° 45.90' N 74° 05.90' W TO 39° 45.15' N 74° 06.20' W (Barnegat Inlet)
 39° 30.70' N 74° 16.70' W TO 39° 26.30' N 74° 19.75' W (Beach Haven to Brigantine Inlet)
 38° 56.20' N 74° 51.70' W TO 38° 56.20' N 74° 51.90' W (Cape May Inlet)
 39° 16.70' N 75° 14.60' W TO 39° 11.25' N 75° 23.90' W (Delaware Bay)

Maryland/Virginia

38° 19.48' N 75° 05.10' W TO 38° 19.35' N 75° 05.25' W (Ocean City Inlet)

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37° 52.50' N 75° 24.30' W TO 37° 11.90' N 75° 48.30' W (Chincoteague to Ship Shoal Inlet)
 37° 11.10' N 75° 49.30' W TO 37° 10.65' N 75° 49.60' W (Little Inlet)
 37° 07.00' N 75° 53.75' W TO 37° 05.30' N 75° 56.50' W (Smith Island Inlet)

North Carolina to Florida

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Gear marking provisions*—(1) *Gear marking required for specified gear*—(i) *Specified gear*. Specified fishing gear consists of lobster pot gear in inshore and offshore lobster waters, anchored gillnet gear in northeast waters and in mid-Atlantic coastal waters; drift gillnet gear in mid-Atlantic coastal waters; and shark driftnet gear in southeast waters.

(ii) *Requirement*. From January 1, 1998, and as otherwise required in paragraphs (c)(1), (d)(1), (e)(1), and (f)(1) of this section, any person who owns or fishes with specified fishing gear must mark that gear as specified in paragraphs (b)(2) and (b)(3) of this section, unless otherwise required by the Assistant Administrator under paragraph (g) of this section.

(2) *Color code*. Gear must be marked as specified with the appropriate colors to designate gear-types as follows:

Lobster pot gear in inshore lobster waters—red and green
 Lobster pot gear in offshore lobster waters—red and blue
 Anchored gillnet gear in northeast waters—green and yellow
 Anchored gillnet gear in mid-Atlantic waters—green and black
 Mid-Atlantic driftnet gear—blue and yellow
 Shark driftnet gear—blue and black

(3) *Markings*. Each color of the color codes must be permanently marked on or along the line or lines specified under paragraphs (c)(1), (d)(1), (e)(1), and (f)(1) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed

within 6 inches (15.2 cm) of each other. (For example, buoy lines of inshore lobster pot gear must have a red mark and a green mark, each at least 4 inches long, with the red and green marks placed within 6 inches of each other.) If the color of the rope is the same or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code or associated neutral band, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic or heat shrink tubing, or other material, or thin line may be woven into or through the line, or the line may be marked as approved in writing by the Assistant Administrator. If the Assistant Administrator revises the gear marking requirements under paragraph (g) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to lobster pot gear in regulated waters*—(1) *Gear marking requirements.* No person may fish with lobster pot gear in regulated waters unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (b) of this section. From January 1, 1998, all buoy lines used in connection with lobster pot gear must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft below a weak link) and midway along the length of the buoy line.

(2) *No line floating at the surface.* No person may fish with lobster pot gear that has any portion of the buoy line floating at the surface at any time, except that, if there are more than one buoy attached to a single buoy line or if there are a high flyer and a buoy used together on a single buoy line, floating line may be used between these objects.

(3) *No wet storage of gear.* No person may leave lobster pot gear in the water without hauling it out of the water at least once in 30 days.

(4) *Cape Cod Bay Restricted area*—(i) *Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b), unless the Assistant Administrator extends that area in accordance with paragraph (g) of this section.

(ii) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (g) of this section. The Assistant Administrator may waive the restrictions of these paragraphs through a document in the FEDERAL REGISTER if it is determined that right whales have left the critical habitat and are unlikely to return for the remainder of the winter restricted period. During the winter restricted period, no person may fish with lobster pot gear in the Cape Cod Bay Restricted Area unless that person's gear complies with the following requirements:

(A) *Weak links.* All buoy lines are attached to the buoy with a weak link. The breaking strength of this weak link must be no more than 1100 lb;

(B) *Multiple pot trawls.* All pots are set in trawls of four or more pots. Single pots and two or three pot trawls are not allowed.

(C) *Sinking buoy lines.* All buoy lines are sinking line except the bottom portion of the line, which may be a section of floating line not to exceed 1/3 the overall length of the buoy line.

(D) *Sinking ground line.* All ground lines are made entirely of sinking line.

(iii) *Other restricted period.* From May 16 through December 31 of each year, no person may fish with lobster pot gear in the Cape Cod Bay Restricted Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(5) *Great South Channel Restricted Lobster Area*—(i) *Area.* The Great South Channel restricted area consists of the Great South Channel Critical Habitat area specified under 50 CFR 216.13(a) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Spring closed period.* The spring closed period for this area is from April 1 through June 30 of each year unless the Assistant Administrator revises the closed period in accordance with

paragraph (g) of this section. During the spring closed period, no person may fish with or set lobster pot gear in the Great South Channel restricted lobster area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) *Other restricted period.* From July 1 through March 31 no person may fish with lobster pot gear in the Great South Channel Restricted Lobster Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(6) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge restricted area consists of all Federal waters of the Gulf of Maine that lie to the south of the 43°15' N lat. line and west of the 70° W long. line, except for right whale critical habitat, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear Requirements.* No person may fish with lobster pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(7) *Northern offshore lobster waters—(i) Area.* The northern offshore waters area includes all offshore lobster waters north of 41°30' N lat., except for areas included in the Great South Channel Critical Habitat.

(ii) *Gear requirements.* No person may fish with lobster pot gear in the northern offshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may re-

vise this requirement in accordance with paragraph (g) of this section.

(8) *Southern offshore lobster waters—(i) Area.* The southern offshore waters area includes all offshore lobster waters south of 41°30' N lat., except for areas included in the Great South Channel Critical Habitat.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with lobster pot gear in the southern offshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(9) *Northern inshore lobster waters—(i) Area.* Northern inshore lobster waters consist of all inshore lobster waters north of 41°30' N lat., except the Cape Cod Bay restricted area, Great South Channel restricted area and the Stellwagen Bank/Jeffreys Ledge restricted area.

(ii) *Gear requirements.* No person may fish with lobster pot gear in the northern inshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(10) *Southern inshore lobster waters—(i) Area.* The southern inshore lobster waters consist of all inshore lobster waters south of 41°30' N lat., except the Great South Channel restricted area.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with lobster pot gear in the southern inshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(11) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(11) *Lobster Take Reduction Technology List.* The following gear characteristics comprise the Lobster Take Reduction Technology List:

(i) All buoy lines are $\frac{7}{16}$ inches in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb. Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) For gear set in offshore lobster areas only, all buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 3780 lb.

(iv) For gear set in offshore lobster areas only, all buoys are attached to the buoy line by a section of rope no more than $\frac{3}{4}$ the diameter of the buoy line.

(v) All buoy lines are composed entirely of sinking line.

(vi) All ground lines are made of sinking line.

(d) *Restrictions applicable to anchored gillnet gear in regulated waters*—(1) *Marking requirements.* No person may fish with anchored gillnet gear in northeast or mid-Atlantic waters unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. From January 1, 1998, all buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or two ft below a weak link) and midway along the length of the buoy line.

(2) *No line floating at the surface.* No person may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time, except that, if there are more than one buoy attached to a single buoy line or if there are a high flyer and a buoy used together on a single buoy line, floating line may be used between these objects.

(3) *Cape Cod Bay restricted area*—(i) *Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b), unless the Assistant Administrator extends that area under paragraph (g) of this section.

(ii) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises the restricted period

under paragraph (g) of this section. During the winter restricted period, no person may fish with anchored gillnet gear in the Cape Cod Bay restricted area unless the Assistant Administrator specifies gear modifications or alternative fishing practices under paragraph (g) of this section and the gear or practices comply with those specifications. The Assistant Administrator may waive this closure for the remaining portion of any year through a notification in the FEDERAL REGISTER if NMFS determines that right whales have left the critical habitat and are unlikely to return for the remainder of the season.

(iii) *Other restricted period.* From May 16 through December 31 of each year, no person may fish with anchored gillnet gear in the Cape Cod Bay Restricted Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(4) *Great South Channel restricted gillnet area*—(i) *Area.* The Great South Channel restricted gillnet area consists of the area bounded by lines connecting the following four points: 41°02.2' N/69°02' W., 41°43.5' N/69°36.3' W., 42°10' N/68°31' W., and 41°38' N/68°13' W., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section. This area includes the Great South Channel critical habitat area specified under 50 CFR 216.13(a), except for the "sliver area" identified below.

(ii) *Spring closed period.* The spring closed period for this area is from April 1 through June 30 of each year unless the Assistant Administrator revises the closed period in accordance with paragraph (g) of this section. During the spring closed period, no person may set or fish with anchored gillnet gear in the Great South Channel restricted gillnet area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) *Other restricted period.* From July 1 through March 31 no person may fish with lobster pot gear in the Great South Channel restricted gillnet area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(5) *Great South Channel sliver restricted area*—(i) *Area.* The Great South Channel sliver restricted area consists of the area bounded by lines connecting the following points: 41°02.2' N/69°02' W., 41°43.5' N/69°36.3' W., 41°40' N/69°45' W., and 41°00' N/69°05' W., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the Great South Channel sliver restricted area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(6) *Stellwagen Bank/Jeffreys Ledge restricted area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge restricted area consists of all Federal waters of the Gulf of Maine that lie to the south of the 43°15' N. lat. line and west of the 70° W long. line, except right whale critical habitat, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge restricted area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(7) *Other northeast waters area*—(i) *Area.* The other northeast waters area consists of all northeast waters except for the Cape Cod Bay restricted area,

the Great South Channel restricted gillnet area and Great South Channel sliver restricted areas and the Stellwagen Bank/Jeffreys Ledge restricted area.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the other northeast waters area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(8) *Mid-Atlantic coastal waters area*—(i) *Area.* The mid-Atlantic coastal waters area is defined in § 229.2.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with anchored gillnets in mid-Atlantic coastal waters area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(9) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(9) *Gillnet Take Reduction Technology List.* The following gear characteristics comprise the Gillnet Take Reduction Technology List:

(i) All buoy lines are 7/16 inches in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb. Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) Gear is anchored with the holding power of a 22 lb. danforth-style anchor at each end.

(iv) Gear is anchored with a 50 lb dead weight at each end.

(v) Nets are attached to a lead line weighing 100 lb or more per 300 feet.

(vi) Weak links with a breaking strength of up to 1100 lb are installed in the float rope between net panels.

(vii) All buoy lines are composed entirely of sinking line.

(e) *Restrictions applicable to mid-Atlantic driftnet gear*—(1) *Gear marking requirements.* No person may fish in mid-

Atlantic coastal waters with drift gillnet gear unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (b) of this section. From January 1, 1998, all buoy lines used in connection with driftnet gear in the mid-Atlantic must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line according to gear type and region.

(2) *Restrictions.* From January 1, 1998, during the winter/spring restricted period, no person may fish at night with driftnet gear in the mid-Atlantic coastal waters area unless that gear is tended. Before a vessel returns to port, all driftnet gear set by that vessel in the mid-Atlantic coastal waters area must be removed from the water and stowed on board the vessel. The winter/spring restricted period for this area is from December 1 through March 31 unless the Assistant Administrator revises that restricted period in accordance with paragraph (g) of this section.

(f) *Restrictions applicable to shark driftnet gear*—(1) *Gear marking requirements.* No person may fish with drift gillnet gear in southeast waters unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. From November 1, 1998, all buoy lines must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line. From November 1, 1999, each net panel must be marked along both the float line and the lead line at least once every 100 feet (30.8 m).

(2) *Management areas*—(i) *SEUS restricted area.* The southeast U.S. restricted area consists of the area from 32°00' N lat. (near Savannah, GA) south to 27°51' N lat. (near Sebastian Inlet, FL), extending from the shore eastward to 80°00' W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *SEUS observer area.* The SEUS observer area consists of the SEUS restricted area and an additional area along the coast south to 26°46.5' N lat. (near West Palm Beach, FL) and extending from the shore eastward out to 80°00' W long., unless the Assistant Ad-

ministrator changes that area in accordance with paragraph (g) of this section.

(3) *Restrictions*—(i) *Closure.* Except as provided under paragraph (f)(3)(iii) of this section, no person may fish with driftnet gear in the SEUS restricted area during the closed period. The closed period for this area is from November 1 through March 31 of the following year, unless the Assistant Administrator changes that closed period in accordance with paragraph (g) of this section.

(ii) *Observer requirement.* No person may fish with driftnet gear in the SEUS observer area from November 1 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 1 through March 31 of the following year, no person may fish with driftnet gear aboard that vessel in the SEUS observer area unless an observer is on board that vessel during the trip.

(iii) *Special provision for strikenets.* Fishing with strikenet gear is exempt from the restriction under paragraph (e)(3)(i) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460 m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, or fin whale.

(D) If a right, humpback or fin whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

(g) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay critical habitat from January 1 through

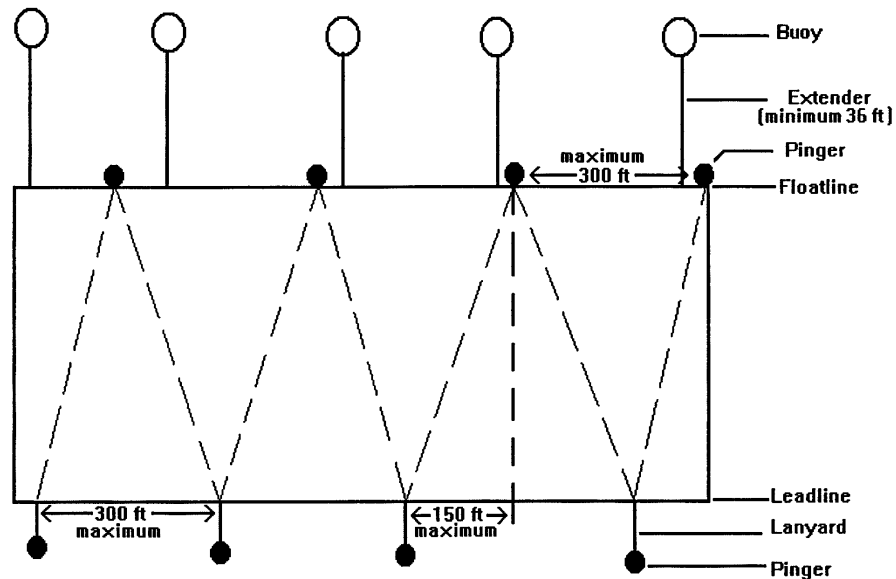
May 15, in the Great South Channel restricted areas from April 1 through June 30, or in the SEUS restricted area from November 1 through March 31 as a result of an entanglement by gear types allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (g)(2) of this section or unless other measures are implemented under paragraph (g)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through publication of a rule in the FEDERAL REGISTER if:

- (i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;
- (ii) New gear technology is developed and determined to be appropriate;
- (iii) Revised breaking strengths are determined to be appropriate;
- (iv) New marking systems are developed and determined to be appropriate;
- (v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;
- (vi) NMFS determines that the boundaries of a closed area are not appropriate;
- (vii) Gear testing operations are considered appropriate; or
- (viii) Similar situations occur.

[62 FR 39184, July 22, 1997]

Figure 1 -- Drift Gillnet Pinger Configuration and Extender Requirements



[63 FR 27861, May 21, 1998]